IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 415 OF 2006

MR. KUSTA CHANDRU VELIP, CANACONA GOA. ....Petitioner

Versus

MR. TOLU GHURKO GAONKAR AND ANR., ...Respondents

Mr. Nitin Sardessai, for the Petitioner.

Mr. S.D. Padiyar, for the Respondents.

Coram:- J. N. PATEL, J.

Date:- 20th December, 2006

P.C.:

Heard.

This petition can be disposed of at the stage of admission itself.

The short question that requires consideration is whether the petitioner who is the original defendant No.2 in the suit was duly served with Court summons.

The petitioner moved an application for setting aside the decree passed against him on the ground that he was not served with summons, on the basis of which the whole case proceeded against him, is not proper. It was the case of the petitioner that he came to know about passing of the impugned decree on attachment of his motor cycle in execution application.

There are other contentions raised in the matter which are not required to be examined.

In order to give a fair opportunity to the petitioner to contest the suit on merits, this Court is inclined to quash and set aside the Judgment and decree to the extent which has been passed against the petitioner/original defendant no.2 on the condition that the petitioner shall deposit 50% of the decreetal amount with costs in the trial Court within six weeks. On such amount being deposited, the respondent/decree holder would be entitled to withdraw the same on furnishing security to the satisfaction of the Trial Court.

On failure of the petitioner to comply with the condition of deposit of 50% of the decreetal amount with costs within the stipulated period, the Writ Petition would stand dismissed. It is made clear that no further extension of time would be granted by the Court to deposit the amount as directed.

Petition stands disposed of accordingly.

J. N. PATEL, J.

sl.